

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: BOWFIN M/V

WESTERN PIONEER, INC., as owner
of the M/V Bowfin for limitation
of liability,

Petitioner-Appellee,

v.

INTERNATIONAL SPECIALTY, INC., as
authorized agents for Sentry Select
Insurance Company and Lloyds of
London Syndicates 588,861,1209,
Royal and Sun Alliance Insurance
Company, Continental Insurance
Company, and Greenwich
Insurance Company; ROYAL AND
SUN ALLIANCE INSURANCE Co.;
CONTINENTAL INSURANCE COMPANY;
GREENWICH INSURANCE Co.,

Claimants-Appellants,

and

SIGNATURE SEAFOODS, INC., owner
of the Lucky Buck,

Claimant.

No. 02-35534

D.C. No.
CV-00-01842-JCC

OPINION

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Argued and Submitted
July 10, 2003—Seattle, Washington

Filed August 13, 2003

Before: Thomas M. Reavley,* A. Wallace Tashima and
Richard A. Paez, Circuit Judges.

Per Curiam Opinion

*The Honorable Thomas M. Reavley, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

COUNSEL

Stanley L. Gibson, Gibson Robb & Lindh, San Francisco, California, for claimant-appellant Signature Seafoods, Inc.

Matthew Turetsky, Schwabe, Williamson & Wyatt, Seattle, Washington, for claimant-appellant International Specialty, Inc.

Donald K. McLean, Bauer Moynihan & Johnson, Seattle, Washington, for the petitioner-appellee.

OPINION

PER CURIAM:

This admiralty action arises out of the collision in the Puget Sound between the Bowfin, owned by Western Pioneer, and the barge Lucky Buck, owned by Claimant Signature Seafoods. Western Pioneer initiated this Limitation of Liability Act¹

¹46 U.S.C. app. §§ 181-196 (Supp. 2003).

proceeding following the collision. The district court held that Western Pioneer was entitled to limit its liability under the Act. We affirm.

[1] The Limitation of Liability Act limits shipowner liability arising from the unseaworthiness of the shipowner's vessel or the negligence of the vessel's crew unless the condition of unseaworthiness or the act of negligence was within the shipowner's "privity or knowledge."² The shipowner has the burden of proving that the act or condition was outside its privity or knowledge after the claimant first establishes what act or condition caused the loss.³ In this case, the district court found that the sole proximate cause of the collision was "spontaneous negligent navigational errors" of the master of the tug and not the master's fatigue (for which the Claimants urged Western Pioneer was responsible). That finding is not clearly erroneous.⁴

[2] We reject the Claimants' contention that, by admitting that its master was at fault, Western Pioneer assumed the burden of negating its privity or knowledge of other acts by its master. The claimant retains the burden of proving what act caused the loss even if the shipowner concedes that its crew was negligent.⁵ The district court's finding resolved the limitation issues.

AFFIRMED.

²*Id.* § 183(a).

³*See Carr v. PMS Fishing Corp.*, 191 F.3d 1, 4 (1st Cir. 1999); *Hercules Carriers, Inc. v. Florida*, 768 F.2d 1558, 1563 (11th Cir. 1985); *In re Brasea, Inc.*, 583 F.2d 763, 738 (5th Cir. 1978).

⁴*See Churchill v. F/V Fjord*, 892 F.2d 763, 770 (9th Cir. 1988).

⁵*See Carr*, 191 F.3d at 4.